THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0952, State of New Hampshire v. Mike A. Esquilin, the court on February 19, 2008, issued the following order:

The defendant, Mike A. Esquilin, appeals his misdemeanor conviction for possession of marijuana. He argues that the trial court erred in finding that the arresting officer's observations gave him reasonable suspicion to detain Esquilin or just cause to frisk him. We reverse and remand.

When we review a trial court's ruling on a motion to suppress, we accept its factual findings unless they lack support in the record or are clearly erroneous. State v. Wiggin, 151 N.H. 305, 307 (2004). Our review of the trial court's legal conclusions is de novo. Id.

To undertake an investigatory stop, a police officer must have reasonable suspicion, based upon specific, articulable facts taken together with rational inferences from those facts, that the particular person stopped has been, is or is about to be engaged in criminal activity. State v. Giddens, 155 N.H. 175, 182 (2007). The factual basis supporting the stop must exist at the time the defendant is, for constitutional purposes, seized. State v. Wallace, 146 N.H. 146, 148 (2001). The suspect's conduct and other specific facts must create a significant possibility of criminality, and the articulated facts must lead to somewhere specific, not just to a general sense that this is probably a bad person who may have committed some type of crime. Giddens, 155 N.H. at 182. To determine the sufficiency of the officer's suspicion, we must consider the facts he articulated in light of all the surrounding circumstances. Id.

In this case, the arresting officer testified that he was patrolling a neighborhood that had had several recent burglaries. He observed the defendant on the back porch of a residence. Although the police officer had been patrolling the neighborhood for five years, he had never before seen the defendant. As the police officer was driving, he observed the defendant run at a full sprint in front of the cruiser to a residence farther up on the opposite side of the street. The officer also testified that he did not know at what point the defendant saw his cruiser. When asked, "As far as you can tell, he doesn't try to run away and avoid getting stopped by you, does he?," the police officer responded, "He does not run and does not avoid being stopped, no."

At the suppression hearing, the State conceded that the defendant was seized when the police officer asked him to come off the porch to which he had

run. At that point, the facts known to the police officer were that the neighborhood had had several recent burglaries, the officer had been patrolling the area for five years, the defendant was not known to him, the defendant was observed on the back porch of a residence, and the defendant left the residence and ran at a full sprint down the street.

Although it may be a factor, "[a]n individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." Illinois v. Wardlow, 528 U.S. 119, 124 (2000). In this case, in concluding that the police officer had reasonable suspicion to stop the defendant, the trial court found that his actions were comparable to those of the defendant in State v. Roach, 141 N.H. 64 (1996). In Roach, the arresting officer observed the defendant "poke his head and body out of an alley, look around, walk up to the corner, return to the alley, and peer out some more, all the while appearing nervous from a distance"; the defendant also turned away from the police officer when he saw him. Id. at 66. In this case, not only did the police officer testify that he did not know whether the defendant began to run before or after he saw his cruiser, but he also testified that the defendant ran directly in front of it.

Based upon this record, we cannot conclude that the defendant's conduct and other specific facts created a reasonable suspicion that the defendant was, had been or was about to be engaged in criminal activity.

Reversed and remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk